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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN 01 113 53074

Office: NEBRASKA SERVICE CENTER Date:

MAY 06 2002

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter will be remanded for further action.

The petitioner is a naturalized citizen of the United States. The petitioner seeks to classify his spouse as a nonimmigrant, pending the availability of an immigrant visa, pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K)(ii). The director denied the petition, stating that a petitioner may not file a petition for a fiance if the two are already married.

On appeal, counsel explains that the new K-3 nonimmigrant classification was created by the LIFE Act and presents a brief in support of the appeal.

Subsection 1103(a) of the Legal Immigration Family Equity Act (LIFE Act), Public Law 106-553 (2000), amended section 101(a)(15)(K) of the Act to include a nonimmigrant classification for the spouse of a United States citizen. In order to qualify for a K-3 nonimmigrant classification, the beneficiary must first be married to a United States citizen who has filed an immediate relative visa petition on behalf of the alien. The spouse must be seeking to enter the United States to wait for "the availability of an immigrant visa." The LIFE Act was enacted on December 21, 2000, and the related regulations were published as an interim rule on August 14, 2001. See 66 Fed. Reg. 42587 (2001) (to be codified at 8 C.F.R. 214.2).

Pursuant to the interim regulations, 8 C.F.R. 214.2(k)(7) provides:

To be classified as a K-3 spouse as defined in section 101(a)(15)(K)(iii) of the Act . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F.

In the present petition, the petitioner submitted a copy of his naturalization certificate. The petitioner also submitted a copy of a Form I-797C receipt notice for a Form I-130, Petition for Alien Relative, filed on behalf of the beneficiary. As the alien spouse is the beneficiary of an immigrant visa petition filed by the U.S. citizen on Form I-130, the petitioner appears to have established eligibility for the K-3 nonimmigrant classification. For this reason, the decision of the director will be withdrawn.

However, it is noted that the regulations governing this nonimmigrant category were published as an interim rule subsequent

to the director's decision and the filing of this appeal. According to the preamble to the interim rule, the petitioner should have submitted the Form I-129F petition to the following address after implementation of the classification: Immigration and Naturalization Service, P.O. Box 7218, Chicago, IL, 60680-7218. As the Service had not published the rules governing the K-3 classification, the Service had not implemented a procedure for handling the current petition. Accordingly, the matter will be remanded to the director for review and adjudication in accordance with the current regulations and procedures.

**ORDER:** The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.